

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Petition of USTelecom for Forbearance Pursuant to)	WC Docket No. 18-141
47 U.S.C. § 160(c) to Accelerate Investment in)	
Broadband and Next-Generation Networks)	
)	
Regulation of Business Data Services for)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers)	
)	
Business Data Services in an Internet Protocol)	WC Docket No. 16-143
Environment)	
)	
Special Access for Price Cap Local Exchange)	WC Docket No. 05-25
Carriers)	

**REPLY COMMENTS OF FRONTIER COMMUNICATIONS
CORPORATION**

Frontier Communications Corporation (“Frontier”) submits these reply comments to the Commission’s recent *Public Notice*¹ seeking comment on the extent of competition in the transport market reflected in the Commission’s *April Data Tables* and the underlying *2015 Data Collection*.² The initial round of comments confirm that there is robust competition for transport nationwide, and relief from outdated pricing regulation, as the Commission found in the *BDS Order*,³ in addition to relief from burdensome unbundled network element (“UNE”) regulation is warranted.

¹ *Wireline Competition Bureau Seeks Focused Additional Comment in Business Data Services and USTelecom Forbearance Petition Proceedings and Reopens Secure Data Enclave*, Public Notice, WC Docket Nos. 18-141, 17-144, 16-143, 05-25, RM-10593, DA 19-281 (WCB rel. Apr. 15, 2019).

² *See Business Data Services in an Internet Protocol Environment et al.*, WC Docket Nos. 16-143 et al., Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723, ¶¶ 29-37, 39-43 (2016) (describing the collection).

³ *See Business Data Services in an Internet Protocol Environment et al.*, 32 FCC Rcd 3459 (2017) (“*BDS Order*”).

I. No Party Seriously Contests that Where Cable Is Present, Forbearance is Merited.

In this proceeding, and in response to the latest round of comments, no party seriously contests that forbearance from the outdated and burdensome UNE regime is merited where cable competition is present. Instead, CLECs seeking to maintain this regime variously argue that (a) the 477 data is not sufficiently granular or reliable; or (b) the relevant market is ILEC inputs, not the voice and broadband market. Neither contention passes scrutiny, thus leaving no real dispute as to forbearance being merited where cable is present.

First, as to the granularity and accuracy of 477 data, the potential issue of data granularity is a rural issue, not an issue for the urban census blocks that cable serves. As Economists Glen Woroch and Robert Calzaretta explain, “[c]ensus blocks that are served by cable are . . . a mean size of 0.09 square miles and a median of 0.008 square miles (or about 5 acres).”⁴ To put that in perspective, the median cable census block (0.008 square miles) is roughly the size of four football fields,⁵ and if the mean cable census block (0.09 square miles) were a circle, it would have a radius a little less than three-quarters of the way around a high school track. In other words, these are small census blocks. If the Commission were nonetheless concerned about the granularity of census blocks, it could exclude larger census blocks, such as census blocks greater than two square miles, or it could exclude rural census blocks. Either way, there is no basis for delaying forbearance in areas where cable is known to be present.

Relatedly, the compact size and urban nature of cable census blocks obviates concerns some parties have suggested with the 477 data. USTelecom’s analysis showing that cable offered “nearly 90 percent of the U.S. population and 90 percent of households had access to cable services with at

⁴ See Declaration of Glenn Woroch and Robert Calzaretta, WC Docket No. 18-141 at 3 n.8 (attached to Letter from Patrick Halley, USTelecom, to Marlene Dortch, FCC, Docket No. 18-141 (May 6, 2019)) (“May 6 Economists’ Decl.”).

⁵ 0.008 square miles is equivalent to approximately 223,000 square feet. A football field is 57,600 square feet.

least 25 Mbps download speeds” relied only on cable data, not wireless internet service provider data, or other ISP data.⁶ While some questions may have been raised with how well certain new providers understand the 477 process, cable providers have been providing data and certifying to it for years.

Second, parties objecting to forbearance where cable is present do not and cannot contest that cable is a direct competitor and, indeed, effectively the incumbent broadband provider. Instead CLECs contend that the relevant product market is not, for instance, broadband, but rather, it is the ILEC input (i.e., the underlying facility). For instance, INCOMPAS argues that “cable providers also do not offer competitive providers an alternative to ILEC transport,” and that “cable facilities would not be well suited for TDM applications like primary rate interface, alarm lines, and elevator lines.”⁷ In other words, the problem is not that any end user market is affected; it is that CLECs are affected.

Put differently, INCOMPAS’s comments fundamentally define CLECs as the competitors in the relevant markets. While this worldview was the Congressional and Commission prediction in 1996 and was the purpose of the unbundling provisions 1996 Act, technological change has shown that cable and wireless have emerged as robust competitors, with cable companies becoming the dominant fixed broadband providers and wireless companies the dominant voice providers. At various points, INCOMPAS recognizes that cable offers service in the true underlying end user markets – for instance cell site backhaul and point-to-point connectivity between multiple business locations.⁸ For INCOMPAS, the problem is not whether the end user market is competitive, it is whether cable or wireless will resell their facilities at below market rates. Of course, in a competitive market, no competitor should be asked to do that.

⁶ See May 6 Economists’ Decl. at 2-3.

⁷ Comments of INCOMPAS, WC Docket No. 18-141 at 22 (May 9, 2019).

⁸ INCOMPAS Comments at 10.

INCOMPAS's arguments boil down to requests for the Commission to protect competitors – CLECs – rather than competition in the underlying broadband and voice markets. But it is black letter competition law that the “purpose is to protect competition, not competitors.”⁹ As the Commission explained in its *Triennial Review Remand Order*, “[o]ur unbundling rules are designed to remove unbundling obligations over time as carriers deploy their own networks and downstream local exchange markets exhibit the same robust competition that characterizes the long distance and wireless markets.”¹⁰ Likewise, as the DC Circuit has found, where there is “robust competition,” it is “hard to see any need for the Commission to impose the costs of mandatory unbundling.”¹¹ Robust competition has arrived.

II. The Suggestion That UNE Forbearance Would Affect Rural Broadband Is a Red Herring.

INCOMPAS's comments strongly suggest that granting forbearance from outdated UNE requirements would slow rural broadband deployment, but there is scant actual evidence that the CLECs purchasing UNEs are deploying rural broadband, especially in areas that are not subject to competition.

In particular, if CLECs were deploying rural broadband in areas unserved by competitors, one would have expected substantial CLEC participation in the Connect America Fund (“CAF”) Phase 2 Auction (“CAF 2 Auction”). However, of the CLECs submitting statements in conjunction with INCOMPAS's comments, it appears that only Socket even attempted to participate in the auction, and it appears that none of the providers ultimately won any funding in the CAF 2 Auction.

⁹ *Philadelphia Taxi Association, Inc. et. al v. Uber Technologies, Inc.*, Case No 17-1871 (Nov. 14, 2017); *see also Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962).

¹⁰ *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533 (2005).

¹¹ *USTA v. FCC*, Case No. 00-1012, 31 (D.C. Cir. Oct. 6, 2004).

The lack of rural participation in the CAF 2 Auction is consistent with the UNE purchasing that Frontier sees in its footprint. Specifically, there is very little ordering of UNEs in the rural portions of Frontier’s footprint. For instance, Frontier reviewed all digital DS0 Loops ordered over a four-month period in 2018 in our 15 states that have “density zone” pricing for UNEs (out of 29 states). Density zones adjust the respective pricing of UNEs to correspond with how rural the area is, and Frontier’s 15 states with density zone pricing have between two and four such zones. Of the loops ordered in these states over this time period, zero were ordered in the most rural density zones, and less than 2% were ordered in the second most rural density zones (if there were more than two density zones). Of those 2% moderately rural customers, 80% had the option of another facility-based provider, generally a cable company, and all had the option to purchase voice and DSL service directly from Frontier.

Nor does it appear that UNEs are being used for residential broadband deployment in any substantial numbers. Frontier also analyzed how many of the DS0 analog and DS0 digital loops are used for residential purposes, and Frontier determined that well over 90% of analog and digital DS0s are used for businesses.¹² Moreover, in the four months’ period described above, only one-tenth of 1% of all loops ordered were for residences in moderately rural areas, and zero in very rural areas. In other words, based on the UNE purchasing in Frontier’s footprint, there is nothing to support that this is a rural residential broadband issue, UNEs appear to be an urban business voice and broadband issue, and, as discussed earlier, these are extremely competitive markets.

The argument that UNEs should remain in rural areas also fundamentally conflicts with the FCC’s CAF program. With *the 2011 USF/ICC Transformation Order* and the transition from implicit

¹² This estimate may understate the percentage of loops that are used for business. Frontier counted the location as a business if it was identified as a business in Frontier’s facility records, if three or more loops were purchased for a single subscriber location, or if the subscriber name was a business name. Because Frontier counted billing records as residential if the party listed was an individual, businesses enrolling under an individual’s name were not captured.

to explicit rural service subsidies, the Commission (a) determined that service to high cost areas was not sustainable without subsidy; and (b) decided to make those subsidies explicit. UNEs in rural areas, however, represent an implicit subsidy financed by the existing rural provider – leasing facilities at below-market, forward-looking cost-based rates set a decade or more ago. Of course, this is not a sustainable solution to rural service, and the FCC’s cost model does not account for UNE purchasing, instead assuming demand can only sustain a single carrier. With CAF, the Commission has a direct, targeted, and successful methodology for serving the areas currently unserved by competitors. Eliminating UNEs is just part of the continued transition away from implicit cross-subsidization, which was only possible when ILECs had all or virtually all of access lines, as compared to approximately 10-11% of voice lines today.

III. DS1 and DS3 UNEs Are Fundamentally Business Data Services.

DS1 and DS3 UNEs – both loop and transport – are the same as DS1s and DS3s, and thus the Commission need not maintain a duplicative UNE pricing regime. In Frontier’s experience, DS1 and DS3 UNEs are identical to DS1 and DS3 business data services in all relevant respects, except for the fact that DS1 and DS3 pricing was set decades ago using the outdated TELRIC methodology. As Verizon, for instance, explains, based on its “experience, competitors consistently convert their DS1 and DS3 business data services to DS1 and DS3 UNEs at the same location serving the same customers.”¹³ Frontier shares this experience.

AT&T similarly explains that DS1s and DS3s are used exclusively for businesses. As AT&T points out, regulated UNE pricing for its 1.5 Mbps DS1 service shows that it cannot realistically be used in the non-business setting.¹⁴ Like AT&T, Frontier’s DS1 UNE loops cost at least \$49, and

¹³ Comments of Verizon, WC Docket No. 18-141, at 7 (May 9, 2019).

¹⁴ Comments of AT&T, WC Docket No. 18-141, at 3 (May 9, 2019) (“DS1 UNEs . . . have maximum download speeds of only 1.5 Mbps and, even at below-cost TELRIC rates, cost at least \$50 (and much more in rural zones).”)

much more in rural areas.¹⁵ At those prices, the only business case for CLECs purchasing DS1s (and even more so in rural areas and for DS3s) is in providing business services to businesses, not broadband internet access service to residential and small business customers. For instance, a CLEC would likely need to purchase at least 3 DS1s at a minimum cost of \$147 to provide a broadband service sufficient to stream HD video.

Given that DS1 and DS3 UNEs are essentially the same as the parallel BDS services, the Commission should afford at least as much regulatory relief in the UNE context as it has with BDS. And with continuing BDS pricing regulations in non-competitive counties, the Commission does not need to keep duplicative UNE pricing regulations for these elements.

Finally, on the topic of UNE transport, Frontier, like Verizon, has a *de minimis* amount of dark fiber UNEs purchased in its footprint.¹⁶ With less than five of these UNEs nationwide, Frontier agrees that maintaining regulations for this element, with the associated training and systems costs, is more trouble than it is worth. At an absolute minimum, given this very low level of usage, the Commission should grandfather these dark fiber UNEs and adjust prices or otherwise enable market negotiations.

IV. No End Users Will Lose Access to Service if the Commission Grants Nationwide Forbearance.

Recognizing that the Commission's competition, and by extension UNE, policy is about "competition, not competitors," Frontier nonetheless can confirm that in addition to no end users losing access to service in its footprint, CLECs will continue to have access to alternative services at commercial rates. Last summer, USTelecom, together with Windstream, agreed to provide a transition framework from current UNE regulations to commercial arrangements.¹⁷ In addition to

¹⁵ The median price for DS1 loops is roughly \$67, with prices escalating over \$100 in rural areas.

¹⁶ Verizon Comments at 15-16.

¹⁷ See Letter from USTelecom, Windstream, AT&T, CenturyLink, Frontier, and Verizon, to Marlene Dortch, FCC, Docket No. 18-141 (June 21, 2018).

reaffirming those commitments, Frontier here confirms that it already offers a voice grade DS0 special access service throughout its footprint, which is a substitute for analog DS0s and represents a DS0 freely available at a commercial rate. Further, Frontier currently offers a commercial UNE-P plan throughout its footprint.¹⁸ Frontier also offers resale of its broadband services to wholesale carriers nationwide.¹⁹ And while today Frontier does not offer a digital DS0 UNE substitute, Frontier commits to continue offering a commercial digital DS0 substitute product if the Commission believes it is a necessary condition of granting relief. Of course, Frontier also offers its DS1 and DS3 service throughout its footprint – at a regulated rate in non-competitive areas and in its product guide elsewhere.

V. Forbearance is in the Public Interest.

As USTelecom explains in its recent *ex parte*, in considering whether forbearance is in the public interest, the Commission must also consider whether it “will promote competitive market conditions.”²⁰ As USTelecom continues, “the Commission has repeatedly found [that] ‘disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers.’”²¹ These considerations must be especially true where, as here, the party requesting forbearance has seen market share fall from around 100 percent at the time of the adoption of legislation to roughly 10-11 percent on the voice side and

¹⁸ See Frontier Wholesale, *Local Services* (last accessed May 27, 2019), <https://frontier.com/wholesale/local-services>.

¹⁹ See Frontier Wholesale, *Wholesale Advantage Broadband* (last accessed May 10, 2019), <https://frontier.com/wholesale/broadband-services#isp>.

²⁰ Letter from Patrick Halley, USTelecom, to Marlene Dortch, FCC, Docket No. 18-141 at 1 (May 24, 2019) (citing *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations et al.*, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7632 ¶ 7 (2013)).

²¹ *Id.* at 2 (citing *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 18705, 18738 ¶ 68 (2007); *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements et al.*, Memorandum Opinion and Order, 22 FCC Rcd 19478, 19508 ¶ 60 (2007) (same); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)) et al.*, 22 FCC Rcd 16304, 16360 ¶ 129 (2007) (same)).

approximately 35-40 percent on the broadband side. As AT&T explains, cable “dominates ILEC broadband offerings, having won more than 60 percent of wireline broadband customers.”²²

If the Commission were adopting new policies today, it would be bad policy and manifestly contrary to the public interest to require the primary competitor to the dominant fixed broadband provider solely to subsidize additional competition. It is simply bad public policy to ask the competitor with less market share, and not the competitor with more market share, to subsidize artificial competition. But that is precisely what the continued UNE regime and a failure to grant forbearance does today. By removing the requirement that carriers like Frontier subsidize artificial competition, the Commission can better enable them to compete on a level-playing field against cable.

Some parties have argued that ILECs could invest in fiber and essentially invest their way out of UNE regulations. While this may have been realistic in theory when ILECs had a greater market share closer to the time of the Act, ILECs have already invested in extensive amounts of fiber, and all that continuing the UNE regime does is force the primary competitor to the dominant broadband provider to compete with the deck stacked against them. Failing to relieve ILECs of UNE obligations would be a vote that it is in the public interest to continue to hamstring the primary terrestrial broadband competitor and to have that competitor subsidize artificial competition.

Moreover, under the existing UNE rules, CLECs have now had 23 years to leverage UNEs as a bridge to building their own broadband networks. If a CLEC has not already built facilities after 23 years, this bridge increasingly seems like a proverbial “bridge to nowhere,” especially if CLECs have not already invested in transport networks, and especially if they do not already have facilities where cable is present. After 23 years, and when there is already facilities-based intermodal competition from cable, mobile wireless, fixed wireless, and satellite, facilities-based competition is already

²² AT&T Comments at 4 (citing Press Release, “2.4 Million Added Broadband in 2018,” Leightman Research Grp., <https://www.leichtmanresearch.com/2-4-million-added-broadband-in-2018/> (March 7, 2019)).

present, and UNEs are serving to undermine ILECs as a competitor. Even the theoretical argument that UNEs serve as a bridge to fiber is difficult to follow in the context of DS1 and DS3 transport, where 1.5 and 45 Mbps speeds cannot serve to backhaul fiber traffic or even 25/3 Mbps broadband speeds.

Furthermore, it becomes increasingly apparent by the day that UNEs are woefully anachronistic. Not only is Frontier forced to sell its services at rock bottom rates and cut into its own sales as it competes with cable, but for about the past four months, this outdated regime has also more or less required Frontier to continue offering service without payment. The largest purchaser of DS0 UNEs from Frontier has fallen several months behind on payments and failed to meet multiple agreed upon payment arrangements while Frontier must continue to provide these services to avoid end-user disruption.

VI. Conclusion

For these reasons, Frontier requests that the Commission affirm its finding with respect to BDS transport and grant the USTelecom Forbearance Petition.

Respectfully submitted,

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